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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,351	02/21/2001	Takayuki Usui	Q61689	1061

7590 01/22/2007
SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
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Washington, DC 20037-3213

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

MAIL DATE	DELIVERY MODE
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01/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/788,351

Applicant(s)

USUI ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-24 and 26-30.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The After Final Amendment filed December 19, 2006 has not been entered since the replacement of "being adapted to be" with is raises new issues that require further consideration and/or search. For example, the structure Applicant intends to recite by the new recitation that includes "is" must be determined.
2. Applicant states "The Examiner has repeatedly failed to address claim 17" in footnote 2 on page 8. The substance of the rejection of claim 17 is in paragraph 20 of the Office Action mailed April 30, 2004. This rejection has been repeated in all of the Office Actions subsequent to the Office Action mailed April 30, 2004. Clarification is requested as to what Applicant intends to state by "The Examiner has repeatedly failed to address claim 17" provided that the rejection of claim 17 made of record in paragraph 20 of the Office Action mailed April 30, 2004 has been repeated in all of the Office Actions subsequent to the Office Action mailed April 30, 2004, including the previous Office Action mailed July 19, 2006.

Response to Arguments

3. Applicant's substantive arguments presented on pages 9-16 that are directed to the facts of the instant application are all unsupported. Applicant's statements in the last two sentences of page 12 are unsupported. Applicant's statement "... would have never..." on page 14 is unsupported. Applicant's statement "... these characteristics are not essential for..." on page 15 is unsupported. Applicant's statement "... air permeability will be excessively large and stability of sensitivity will not be maintained..." on page 15 is unsupported. Applicant's statements in the paragraph bridging pages 15 and 16 in regard to what is shown in the Declaration filed April 24,

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2006 are unsupported. Applicant's statements in the first full paragraph of page 16 in regard to what is shown in the Declaration filed April 24, 2006 are unsupported. Applicant also does not explain how the arguments in the paragraph bridging pages 15 and 16 and the first full paragraph of page 16 address the pertinent rejections of record.

Applicant's statement on page 13 that The Declaration filed April 24, 2006 provides evidence that "density is unrelated to air permeability" is unsupported. On page of the previous Office Action mailed July 19, 2006 it is stated that Declarant

states that "there is no correlation or interrelationship between density and air permeability" on page 2 of the Declaration, but the Office Action does not allege that there is. The chart merely provides the endpoints of the range that the Office Action cites from the Usui patent on page 6 (previous Office Action mailed September 22, 2005). The data provided in the column furthest to the right regarding the "Usui 2" reference is inconclusive since all the air permeability values are reported as "1000 or above". Declarant has not explained how this statement and chart addresses the rejection of record, and Applicant's Representative has not explained how this statement and chart addresses the rejection of record on page 11 of Amdt. H.

Page 8 of previous Office Action mailed July 19, 2006.

4. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 7 and 13 depend upon entry of the After Final Amendment, which has not been entered for the reason provided above. Applicant refers to "the first embodiment" of Usui, but this is only one embodiment and does not define the scope of the teachings of Usui.

5. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claim 28 depend upon entry of the After Final Amendment, which has not been entered for the reason provided above. Furthermore, the paper spacer of Coppens is a "means for preventing..." as claimed since the spacer of Coppens that packages the planographic printing plate has a surface that contacts the imaging surface of the planographic printing plate (col. 3, lines 41-43).

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Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Walter B. Aughenbaugh
01/17/07

WA


JENNIFER MCNEIL
SUPERVISORY PATENT EXAMINER

1/18/07